

**REMARKS****BEST AVAILABLE COPY****1. Claim Amendments.**

Claims 1, 6, 21, and 22 have been reviewed and amended for clarity. Care has been taken to use only language contained in the Specification as originally filed and no new matter has been entered. Somewhat more specifically, these claims have been amended by reordering the steps into a more logical order and by adding some clarifying language so as to make the claim more readable.

The amended claims now clarify that not only are the tear-open strips provided with printed markings, but that the continuous film web also has printed markings. Accordingly, another printed-mark reader is provided for sensing these printed markings on the continuous film web. Support for this can be found in the Specification on page 6, lines 22-29. The two printed markings are sensed after the tear-open strip has been applied to the continuous film web. Any necessary corrections made to the feed of the material web or to the continuous film web thus affect only the subsequently produced blanks, resulting in a more continuous operation and a greater overall production rate.

In addition, the amended claims now clarify that the tear-open strip and the continuous film web both have decorative or informative printing. This printing may be in the form of graphic designs or involve text messages. Like the printed markings, this decorative or informative printing is applied during the production of the material strip and the continuous film web.

According to the invention, the arrangement of the printed markings on the printed continuous film web, on the one hand, and on the material strip, on the other hand, ensures that the printing on the tear-open strip and the printing on the material web are located in their correct or predetermined position relative to one another on the finished pack. This solution is not shown in the cited art.

**2. The Invention As Claimed Is Not Obvious Under 35 USC 103 In View Of The Cited Art.**

Neither US Patent No. 3551245 to Gamberini (Gamberini '245) nor US Patent No. 5470300 to Terranova (Terranova '300), nor any reasonable combination of these patents, discloses or suggests the invention as claimed.

Gamberini '245 merely discloses the use of a tear-open strip on a film web, whereby the tear-open strip is provided with colored markings directly on site at the packaging machines for the purpose of highlighting the grip end of the strip. More specifically, the Gamberini '245 device provides a directional cue to the purchaser of the product where the tear-open strip starts, and does not provide a means for actually producing a precise blank having a tear-open strip thereon. Further, no additional decorative or informative printing of the tear-open strip is disclosed in Gamberini '245. Additionally, the material web disclosed in Gamberini '245 has neither printing nor printed markings.

Terranova '300 discloses the general notion of the formation of individual blanks by using printed markings on a continuous web. However, contrary to the present invention as claimed, Terranova '300 neither discloses nor suggests the use of a tear-open strip in general, or of a precisely marked tear-open strip as in the present invention.

Applicant asserts that one of ordinary skill in the art would not combine Gamberini '245 and Terranova '300 to arrive at the present invention. The examiner has not established a *prima facie* case of obviousness based upon this prior art. There is no objective teaching in the cited prior art or knowledge generally available to one of ordinary skill in the art that would lead that individual to combine the relevant teachings of the references. *In re Fritch*, 972 F2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). In this situation, the examiner has resorted to speculation and hindsight reconstruction to supply deficiencies in the factual basis for the rejection, which is inappropriate under the US Patent Laws and Rules. *See In re Warner*, 379 F2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967).

One of ordinary skill in the art would not combine these devices or elements without some type of motivation or blueprint, namely Applicant's invention. A number of

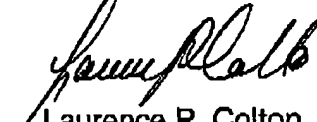
mental steps are necessary to arrive theoretically at the result desired by the examiner. However, the corresponding key points that would direct one of ordinary skill in the art in the right direction are not present in the cited art, but are only available through hindsight using Applicant's invention as a blueprint.

### **CONCLUSION**

Applicant submits that the claims are in condition for allowance, and Applicant respectfully requests such action.

If the examiner has any final concerns that can be addressed over the telephone, the examiner is invited to contact the below-signed attorney of record.

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